

May 17, 2013

The Honorable Bob Perciasepe
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Mr. Perciasepe:

The Environmental Protection Agency, like all other federal agencies, is subject to the Freedom of Information Act,¹ which provides the public access to information to understand “what their government is up to,” through a FOIA request.² According to documents obtained by the Committees, EPA readily granted FOIA fee waivers for liberal environmental groups—effectively subsidizing them—while denying fee waivers and making the FOIA process more difficult for states and conservative groups.³ This disparate treatment is unacceptable, especially in light of the recent controversy over abusive tactics at the Internal Revenue Service, which singled out conservative groups for special scrutiny. The EPA’s imposition of procedural barriers with the ostensible purpose of hindering conservative groups and states in obtaining information afforded to EPA’s allies. Accordingly, we request your prompt attention to this matter as we investigate EPA’s process for granting FOIA fee waivers.

Congress provided a mechanism for FOIA requesters to obtain a fee waiver in an effort to promote public access to information. An agency may grant a fee waiver if the requested information is likely to contribute to the public understanding of governmental operations and activities, and if the requested information is not in the commercial interests of the requester.⁴ A key factor in qualifying for a fee waiver is the requester’s ability to convey information to other interested members of the public.⁵ For this reason, representatives of the news media, and educational or noncommercial scientific institutions whose purpose is scholarly or scientific

¹ *DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 763 (1989); see also U.S. Dep’t of Justice, *The Freedom of Information Act (FOIA): About*, <http://www.justice.gov/open/foia.html> (last accessed May 16, 2013).

² See 5 U.S.C. § 552.

³ Michael Bastasch, *EPA makes information requests more difficult for conservatives*, DAILY CALLER, May 14, 2013, <http://dailycaller.com/2013/05/14/epa-makes-information-requests-more-difficult-for-conservatives/>.

⁴ See 5 U.S.C. § 552.

⁵ H.R. REP. NO. 109-226, A CITIZEN’S GUIDE ON USING THE FREEDOM OF INFORMATION ACT AND THE PRIVACY ACT OF 1974 TO REQUEST GOVERNMENT RECORDS (2005), available at <http://www.gpo.gov/fdsys/pkg/CRPT-106hrpt50/pdf/CRPT-106hrpt50.pdf>.

research, should receive a fee waiver.⁶ Moreover, any requester may obtain a fee waiver if the information requested will aid the public in understanding the operations or activities of the government. Overall, it is critical that agencies make these determinations in an impartial and unbiased way.

The Committees have reviewed over 1,200 pages of EPA correspondence sent between January 1, 2012 and April 26, 2013, regarding fee waivers. The results of this review demonstrate EPA manipulated the FOIA fee waiver process. Fee waiver requests sent by environmental groups, such as National Resources Defense Council, EarthJustice, Public Employees for Environmental Responsibility, Sierra Club, and National Wildlife Federation, were granted for 92% of the requests.⁷ In sharp contrast, during the same period, EPA denied a fee waiver for 93% of requests from the Competitive Enterprise Institute,⁸ a free market think tank, and overall only granted fee waivers for other think tanks 27% of the time.⁹ Moreover, EPA denied nearly every request for a fee waiver from states and localities.¹⁰

The startling disparity in treatment strongly suggests EPA's actions are possibly part of a broader effort to collude with groups that share the agency's political agenda and purposely discriminate against states and conservative organizations.¹¹ This is a clear abuse of discretion. Consequently, the Committees request that you immediately take necessary steps to ensure that such manipulation of the FOIA process does not occur in the future.

Moreover, while we appreciate the fact that you have referred this matter to the Inspector General,¹² the EPA's actions require congressional scrutiny. Accordingly, the Committees request that EPA provide the Committees with all future fee waiver decision letters on a monthly basis, so that we can monitor EPA's decisions moving forward; and that EPA make arrangements to make Larry Gottesman, the EPA's National FOIA Officer, available for a transcribed interview with Committee staff by no later than May 23, 2013. Finally, the Committees request that EPA provide the following documents as soon as possible, but by no later than noon on May 31, 2013:

1. All FOIA fee waiver requests submitted to EPA between January 21, 2009 and May 16, 2013. This production should include all requests for appeal.

⁶ *Id.*

⁷ See EPA FOIA Fee Waiver Analysis, Committee on Environment and Public Works, U.S. Senate, Minority Staff, at 2 [hereinafter Attachment].

⁸ See 5 U.S.C. § 552.

⁹ See Attachment at 4.

¹⁰ See *id.* at 3.

¹¹ See *id.* at 1.

¹² Ben Geman, *EPA to review claims of bias against conservatives amid fight over IRS*, THE HILL, May 16, 2013, <http://thehill.com/blogs/e2-wire/e2-wire/300167-epas-internal-watchdog-to-probe-bias-claims-amid-gop-comparisons-to-tax-scandal#ixzz2TTWzJDAD>.

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2. All response letters from EPA to FOIA fee waiver requestors sent between January 21, 2009, and December 31, 2012, including all responses to an appeal.
3. All EPA materials used to train FOIA officers on processing requests for FOIA fee waivers.
4. All communications, including e-mails, regarding FOIA fee waiver requests or appeals, including, but not limited to, training for processing FOIA fee waivers, sent or received between January 21, 2009 and May 16, 2013.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at “any time” investigate “any matter” as set forth in House Rule X. The U.S. Senate Committee on Environment and Public Works focuses on federal energy and environmental policy and our nation’s transportation and infrastructure systems. The U.S. Senate Committee on the Judiciary has jurisdiction over the implementation of FOIA. An attachment to this letter provides additional information about responding to the Committees’ request.

When producing documents to the Oversight Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. When producing documents to the Environment and Public Works Committee, please deliver production sets to 415 Hart Senate Office Building. The Committees prefer, if possible, to receive all documents in electronic format.

Thank you for your prompt attention to this matter. If you have any questions regarding this request, please contact Kristina Moore of the Senate Environment and Public Works Committee at (202) 224-6176 or Tyler Grimm of the House Committee on Oversight and Government Reform at (202) 225-5074.

Sincerely,

David Vitter
Ranking Member
Committee on Environment and
Public Works
U.S. Senate

Darrell E. Issa
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives

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James Inhofe
Ranking Member, Subcommittee on Oversight
Committee on Environment and Public Works
U.S. Senate

Charles E. Grassley
Ranking Member
Committee on the Judiciary
U.S. Senate

Enclosures

cc: The Honorable Barbara Boxer, Chairman
Committee on Environment and Public Works
U.S. Senate

The Honorable Elijah Cummings, Ranking Minority Member
Committee on Oversight and Government Reform
U.S. House of Representatives

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
U.S. Senate

The Honorable Sheldon Whitehouse, Chairman
Subcommittee on Oversight
Committee on Environment and Public Works
U.S. Senate